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1 EXAMINATION  
 2 BY MR. ROBERTS:  
 3 Q. Good afternoon, sir, my name is Mike  
 4 Roberts. I'm a lawyer and I represent Chris  
 5 Kearney in a lawsuit pending in the State of  
 6 Ohio Federal Court there.  
 7 Could you please state your name and  
 8 address for the record, please?  
 9 A. William Edward Dempsey, D-E-M-P-S-E-Y.  
 10 Q. Mr. Dempsey, I understand that you have  
 11 a law degree?  
 12 A. Yes.  
 13 Q. Where did you go to law school?  
 14 A. Washburn Law school in Topeka, Kansas.  
 15 Q. What year did you graduate?  
 16 A. 1990.  
 17 Q. As did I. Tell me your employment  
 18 history since 1990?  
 19 A. I worked for the Kansas Insurance  
 20 Department from 19 -- well, until 1993, until  
 21 September of 1993. And I went to work for a  
 22 company called US Physicians Mutual Risk  
 23 Retention Group in Kansas City in September of  
 24 1993 and was employed there until May of 1996.  
 25 In May of 1996 I accepted a position with Smith

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1 Staffing Services in Wichita, Kansas, and I  
 2 worked there until October of 2006, at which  
 3 time I accepted a position with Employers  
 4 Reinsurance Corporation in Overland Park,  
 5 Kansas, and I've been employed there since.  
 6 Q. Did you say Employers Reinsurance or  
 7 Employees Reinsurance?  
 8 A. Employees Reinsurance.  
 9 Q. R-E-I.  
 10 A. R-e-i-n-s-u-r-a-n-c-e. The corporation  
 11 was purchased by Swiss Re, a good portion of the  
 12 corporation was purchased by Swiss Re. The sale  
 13 closed in late June of 2006 and the life and  
 14 health portion of the business became Employers  
 15 Reinsurance Corporation.  
 16 Q. You're getting ahead of me a little  
 17 bit?  
 18 A. I apologize.  
 19 Q. I may have written this down  
 20 incorrectly. Did you say you were at Smith  
 21 Staffing from May of '96 to October of '96?  
 22 A. Correct.  
 23 Q. And then from October of '96 through  
 24 the present it's been Employers Reinsurance?  
 25 A. It was Reinsurance until the sale of

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1 the company. And then it become ERAC, Employers  
 2 Reassurance Corporation.  
 3 Q. Change one vowel?  
 4 A. Add one, yes. Instead of ERC it's  
 5 ERAC.  
 6 Q. Who did you report to when you started  
 7 at ERC?  
 8 A. Robert Lainer.  
 9 Q. Is Mr. Lainer a lawyer?  
 10 A. No.  
 11 Q. What was his position then?  
 12 A. Assistant Vice-President.  
 13 Q. Lainer is L-a-i-n-e-r?  
 14 A. Correct.  
 15 Q. And he was Assistant Vice-President at  
 16 ERC?  
 17 A. Correct.  
 18 Q. And did he remain your superior until  
 19 the transaction you described earlier with Swiss  
 20 Re?  
 21 A. He was my supervisor until  
 22 approximately two years ago and they had a  
 23 company reorganization. And so both Bob Lainer  
 24 and myself report to another person now. We're  
 25 on the same level. They flattened the

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1 organization so to speak. So instead of having  
 2 myself and several people report to Bob, we just  
 3 now report to a different individual.  
 4 Q. In the last two years who is it you  
 5 have been reporting to?  
 6 A. Tom Felgate.  
 7 Q. Can you spell that last name, please?  
 8 A. F-e-l-g-a-t-e.  
 9 Q. What is Mr. Felgate's position?  
 10 A. He is the head of the life and health  
 11 claims area for Employers Reassurance  
 12 Corporation.  
 13 Q. Is he also a Vice-President?  
 14 A. I don't know if he has that title.  
 15 Q. What is your title presently?  
 16 A. Claims counsel.  
 17 Q. What has your title been along the  
 18 progression from October of '96 through today?  
 19 A. The same.  
 20 Q. Did the company have a general counsel,  
 21 someone filling that title?  
 22 A. Yes.  
 23 Q. Who was that?  
 24 A. I can't remember the individual's name  
 25 when I first started there. And it's been

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<p>1 Q. Given the facts before us, the type of 2 policy Mr. Kearney purchased, the date he 3 purchased it, the particular riders he 4 purchased, the amounts of the claim, the date he 5 filed the loss, given all those things, because 6 of this agreement between this General Electric 7 subsidiary and Jefferson-Pilot, your company, 8 the General Electric subsidiary, has greater 9 than 50 percent of the responsibility to pay the 10 claim monetarily ultimately?</p> <p>11 A. Pursuant to the terms of the 12 reinsurance agreement, ERC has a percentage of 13 the loss, which to my recollection is greater 14 than 50 percent.</p> <p>15 Q. And since the time that Mr. Kearney 16 purchased his claim, your company, the General 17 Electric subsidiary, has been receiving a 18 percentage of the premium dollars that he's 19 paid, true? Is that correct?</p> <p>20 A. I can only assume so. I don't know 21 that for a fact.</p> <p>22 Q. So tell the jury what you do as claims 23 counsel for ERC?</p> <p>24 A. I work with the companies that we 25 reinsure. I go out and look at the claims that</p>	<p>1 Q. I'm speaking generally. I'm not 2 speaking about Mr. Kearney's policy 3 specifically. I'm sorry if I confused you.</p> <p>4 If John Doe, Jefferson-Pilot 5 policyholder, were to file a claim or had a 6 claim pending since '96, would that claim 7 necessarily be something that you would have 8 responsibility for here as the reinsurer?</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 A. It's not my job to adjudicate the 12 claims.</p> <p>13 Q. I didn't say adjudicate. When would 14 you have any involvement in John Doe's 15 Jefferson-Pilot claim?</p> <p>16 A. In which context, with Jefferson-Pilot 17 or DMS?</p> <p>18 Q. Let's talk about the period prior to 19 2000.</p> <p>20 A. I would look at claims sometimes at the 21 request of Jefferson-Pilot. Sometimes I would 22 visit Greensboro and we would look at a list of 23 claims. We would pick out a random list of 24 claims to examine and that was the extent of my 25 involvement. It would just be to review the</p>
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<p>1 are incurred on occasions. Sometimes they are 2 sent to my office. Just depends on the nature 3 of the reinsurance agreement.</p> <p>4 Q. I'm not sure I fully understood you. 5 Your responsibilities go beyond just the 6 individual disability insurance policies that 7 Jefferson-Pilot sold, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Although that is within your 10 responsibility, you also cover these other types 11 of insurance, life, long term care, the others 12 you described to me?</p> <p>13 A. Correct.</p> <p>14 Q. But when a policyholder of a 15 Jefferson-Pilot policy files a claim, that would 16 come within your area of responsibility as the 17 reinsurer, is that right?</p> <p>18 A. No.</p> <p>19 Q. What about that question was not 20 correct?</p> <p>21 A. I don't have direct involvement with 22 the claim per se. The claim was sent initially 23 to Jefferson-Pilot. Subsequent to January of 24 2000, I believe the claims were sent to 25 Disability Management Services.</p>	<p>1 contents of the claim file.</p> <p>2 Q. Your testimony to the jury is you would 3 from time to time go and perform somewhat of an 4 audit function in Greensboro of the 5 Jefferson-Pilot claims?</p> <p>6 A. A review would probably be a more apt 7 description of what we did. We would review the 8 contents of the claim file.</p> <p>9 Q. Is your testimony that this review 10 would be entirely random, or would you go to 11 North Carolina from Kansas with the intention of 12 looking at specific claims that you would 13 identify?</p> <p>14 A. We would have identified claims ahead 15 of time for Jefferson-Pilot to have ready, to 16 have them pulled so that we wouldn't have to do 17 it when we got there. So we would identify a 18 list of claims for them.</p> <p>19 Q. Did you randomly identify the claims or 20 were they claims that you specifically 21 identified for reasons?</p> <p>22 A. A combination.</p> <p>23 Q. Did you ever do that with regard to 24 Mr. Kearney's claim as far as you know?</p> <p>25 A. I don't recall if I ever examined</p>

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1 Q. Given the facts before us, the type of  
2 policy Mr. Kearney purchased, the date he  
3 purchased it, the particular riders he  
4 purchased, the amounts of the claim, the date he  
5 filed the loss, given all those things, because  
6 of this agreement between this General Electric  
7 subsidiary and Jefferson-Pilot, your company,  
8 the General Electric subsidiary, has greater  
9 than 50 percent of the responsibility to pay the  
10 claim monetarily ultimately?

11 **A. Pursuant to the terms of the**  
12 **reinsurance agreement, ERC has a percentage of**  
13 **the loss, which to my recollection is greater**  
14 **than 50 percent.**

15 Q. And since the time that Mr. Kearney  
16 purchased his claim, your company, the General  
17 Electric subsidiary, has been receiving a  
18 percentage of the premium dollars that he's  
19 paid, true? Is that correct?

20 **A. I can only assume so. I don't know**  
21 **that for a fact.**

22 Q. So tell the jury what you do as claims  
23 counsel for ERC?

24 **A. I work with the companies that we**  
25 **reinsure. I go out and look at the claims that**

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1 **are incurred on occasions. Sometimes they are**  
2 **sent to my office. Just depends on the nature**  
3 **of the reinsurance agreement.**

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5 Your responsibilities go beyond just the  
6 individual disability insurance policies that  
7 Jefferson-Pilot sold, correct?

8 **A. Correct.**

9 Q. Although that is within your  
10 responsibility, you also cover these other types  
11 of insurance, life, long term care, the others  
12 you described to me?

13 **A. Correct.**

14 Q. But when a policyholder of a  
15 Jefferson-Pilot policy files a claim, that would  
16 come within your area of responsibility as the  
17 reinsurer, is that right?

18 **A. No.**

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20 correct?

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22 **the claim per se. The claim was sent initially**  
23 **to Jefferson-Pilot. Subsequent to January of**  
24 **2000, I believe the claims were sent to**  
25 **Disability Management Services.**

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2 speaking about Mr. Kearney's policy  
3 specifically. I'm sorry if I confused you.

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5 policyholder, were to file a claim or had a  
6 claim pending since '96, would that claim  
7 necessarily be something that you would have  
8 responsibility for here as the reinsurer?

9 **A. No.**

10 Q. Why not?

11 **A. It's not my job to adjudicate the**  
12 **claims.**

13 Q. I didn't say adjudicate. When would  
14 you have any involvement in John Doe's  
15 Jefferson-Pilot claim?

16 **A. In which context, with Jefferson-Pilot**  
17 **or DMS?**

18 Q. Let's talk about the period prior to  
19 2000.

20 **A. I would look at claims sometimes at the**  
21 **request of Jefferson-Pilot. Sometimes I would**  
22 **visit Greensboro and we would look at a list of**  
23 **claims. We would pick out a random list of**  
24 **claims to examine and that was the extent of my**  
25 **involvement. It would just be to review the**

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1 **contents of the claim file.**

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3 from time to time go and perform somewhat of an  
4 audit function in Greensboro of the  
5 Jefferson-Pilot claims?

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7 **description of what we did. We would review the**  
8 **contents of the claim file.**

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10 would be entirely random, or would you go to  
11 North Carolina from Kansas with the intention of  
12 looking at specific claims that you would  
13 identify?

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15 **of time for Jefferson-Pilot to have ready, to**  
16 **have them pulled so that we wouldn't have to do**  
17 **it when we got there. So we would identify a**  
18 **list of claims for them.**

19 Q. Did you randomly identify the claims or  
20 were they claims that you specifically  
21 identified for reasons?

22 **A. A combination.**

23 Q. Did you ever do that with regard to  
24 Mr. Kearney's claim as far as you know?

25 **A. I don't recall if I ever examined**

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<p>1 names appear in some business record of ERC?</p> <p>2 MR. MEAGHER: Objection to form.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. (By Mr. Roberts) Would all of the</p> <p>5 claim files associated with those hypothetical</p> <p>6 273 claimants been housed at ERC?</p> <p>7 <b>A. We don't typically have claim files on</b></p> <p>8 <b>individual claims at ERC.</b></p> <p>9 Q. Well, in this lawsuit I served a</p> <p>10 subpoena and last week there was over, I think</p> <p>11 3600 pages of information produced by your</p> <p>12 company regarding Mr. Kearney. Do you have that</p> <p>13 volume of information regarding claimants on</p> <p>14 which you reinsure?</p> <p>15 MR. MEAGHER: Objection to the</p> <p>16 form. You may answer.</p> <p>17 <b>A. It would probably depend on the claim.</b></p> <p>18 <b>I suspect the reason there were 3600 pages as</b></p> <p>19 <b>you state with respect to this claim is because</b></p> <p>20 <b>it's in litigation.</b></p> <p>21 Q. (By Mr. Roberts) You said that you</p> <p>22 might go out and look at a claim. And under</p> <p>23 some agreement with your company's clients, you</p> <p>24 send -- this is sent to the office depending on</p> <p>25 reinsurance agreements. What did you mean by</p>	<p>1 of that relationship to be?</p> <p>2 <b>A. I, as I understand it, they had a</b></p> <p>3 <b>consulting agreement with Disability Management</b></p> <p>4 <b>Services.</b></p> <p>5 Q. "They" meaning --</p> <p>6 <b>A. ERC.</b></p> <p>7 Q. -- ERC. Is ERC and ERAC different</p> <p>8 companies or just a name change?</p> <p>9 <b>A. ERAC was a wholly-owned subsidiary of</b></p> <p>10 <b>ERC at one point in time for business reasons</b></p> <p>11 <b>and the way they compartmentalized the various</b></p> <p>12 <b>lines of business that they engaged in.</b></p> <p>13 Q. Okay. So ERC entered some kind of</p> <p>14 consulting agreement with Disability Management</p> <p>15 Services in about '96 or '97, is that right?</p> <p>16 <b>A. I don't know when the agreement was</b></p> <p>17 <b>entered into, but it existed at the time I began</b></p> <p>18 <b>my employment.</b></p> <p>19 Q. And can you tell the jury what you</p> <p>20 understand to be the main points of that</p> <p>21 agreement?</p> <p>22 <b>A. I only know that ERC had that</b></p> <p>23 <b>agreement. I really -- I don't -- I never</b></p> <p>24 <b>reviewed the document. I don't know anything</b></p> <p>25 <b>about it.</b></p>
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<p>1 that?</p> <p>2 <b>A. On some reinsurance agreements</b></p> <p>3 <b>particularly where a company is engaging in a</b></p> <p>4 <b>line of business that they are not perhaps</b></p> <p>5 <b>accustom to marketing such as critical illness,</b></p> <p>6 <b>ERC would have the right to review the claim</b></p> <p>7 <b>before a decision is made in that matter.</b></p> <p>8 Q. What did you mean by it's sent to this</p> <p>9 office depending on the reinsurance agreement.</p> <p>10 The entire claim file gets sent to ERC or ERAC?</p> <p>11 <b>A. The information that the insurer has</b></p> <p>12 <b>gathered with respect to the claim would be</b></p> <p>13 <b>forwarded to our offices for review.</b></p> <p>14 Q. Did that happen in Mr. Kearney's case?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Where did you go to college, sir?</p> <p>17 <b>A. I graduated from Fort Hays State</b></p> <p>18 <b>University.</b></p> <p>19 Q. In addition to having this business</p> <p>20 relationship with Jefferson-Pilot in 1996 or</p> <p>21 1997, did your company have a business</p> <p>22 relationship with Disability Management</p> <p>23 Services?</p> <p>24 <b>A. I believe so.</b></p> <p>25 Q. What do you understand that the nature</p>	<p>1 Q. As you understand the agreement just</p> <p>2 the way it works without reading it, was it a</p> <p>3 situation where ERC would select certain claims</p> <p>4 for review by DMS whether they be</p> <p>5 Jefferson-Pilot insureds or Mass Mutual insureds</p> <p>6 or other clients of ERC?</p> <p>7 <b>A. I don't know what the process was.</b></p> <p>8 Q. You do know that Mr. Kearney's claim</p> <p>9 was selected for review by DMS pursuant to the</p> <p>10 ERC consulting agreement entered about 1997,</p> <p>11 right?</p> <p>12 MR. MEAGHER: Objection to form.</p> <p>13 <b>A. I know that DMS was involved. I don't</b></p> <p>14 <b>know how it -- Mr. Kearney's claim became</b></p> <p>15 <b>involved, or how DMS became involved with</b></p> <p>16 <b>Mr. Kearney's claim.</b></p> <p>17 Q. (By Mr. Roberts) Were you the point</p> <p>18 person for JP with regard to Mr. Kearney's claim</p> <p>19 in 1997 or was that Mr. Newkirk?</p> <p>20 <b>A. I believe that was Mr. Newkirk.</b></p> <p>21 Q. Did there come a point where</p> <p>22 Mr. Newkirk relinquished that responsibility to</p> <p>23 you?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. When was that?</p>



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1 **A. I believe it was in 1998.**  
 2 Q. What precipitated that?  
 3 **A. I really don't know.**  
 4 Q. He just came into your office one day  
 5 and said "Here, I want you to have that client.  
 6 I don't want to deal with it anymore?"  
 7 **A. No.**  
 8 Q. Do you recall how it happened?  
 9 **A. I recall having the responsibility for**  
 10 **the Jefferson-Pilot account given to me sometime**  
 11 **in 1998.**  
 12 Q. What did you do in preparation for  
 13 today's deposition, sir?  
 14 **A. I spoke with counsel yesterday. That's**  
 15 **essentially it.**  
 16 Q. You're referring to?  
 17 **A. I'm referring to Mr. Baty and Mr.**  
 18 **Meagher.**  
 19 Q. You met with the two of them yesterday?  
 20 **A. That is correct.**  
 21 Q. For how long?  
 22 **A. Probably five hours including lunch.**  
 23 Q. Did anyone else participate during the  
 24 course of that five-hour meeting with two  
 25 lawyers?

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1 **A. Yes.**  
 2 Q. Who else?  
 3 **A. Mr. Formus and Ms. Farabow and**  
 4 **Mr. Ellis for a very brief period of time, and**  
 5 **Mr. Cohen for a brief period of time.**  
 6 Q. So you're a lawyer and yesterday you  
 7 met with those six lawyers?  
 8 **A. That's correct.**  
 9 Q. Preparing for today's depo?  
 10 **A. That is correct.**  
 11 Q. And did you meet today with your  
 12 counsel in preparation for the deposition?  
 13 **A. I spoke with him briefly before we came**  
 14 **to this floor for the meeting. For the**  
 15 **deposition I should say.**  
 16 Q. Well, I arrived 75 minutes before the  
 17 deposition and my understanding was that you  
 18 were in conference at that point?  
 19 **MR. MEAGHER: Objection. It**  
 20 **assumes facts not in evidence.**  
 21 **A. That's not correct.**  
 22 Q. (By Mr. Roberts) How long were you in  
 23 conference today?  
 24 **A. Perhaps half an hour.**  
 25 Q. With whom were you in conference?

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1 **A. Mr. Meagher and Mr. Baty.**  
 2 Q. Did you review documents during the  
 3 course of yesterday's preparation with the six  
 4 lawyers?  
 5 **A. I reviewed a document.**  
 6 Q. Just one document?  
 7 **A. Just one document.**  
 8 Q. What was that?  
 9 **A. It was a piece of correspondence from**  
 10 **Valerie Loftin to Bob Bonzell.**  
 11 Q. Do you know if that was produced  
 12 pursuant to the subpoena or identified in the  
 13 privilege log?  
 14 **A. I believe it was both produced and**  
 15 **identified. I have not seen the privilege log,**  
 16 **so I don't know.**  
 17 Q. You believe it was produced to me and  
 18 then also identified in the privilege log?  
 19 **A. I believe it was produced in the course**  
 20 **of the documents that I provided to counsel.**  
 21 **And I believe it has been identified as a**  
 22 **privilege document. Again, I've not reviewed**  
 23 **the privilege log, so...**  
 24 Q. Mr. Bonzell's name doesn't appear in  
 25 the privilege log. Why don't we -- I'm going to

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1 give you the privilege log and we will mark it  
 2 as one. And then you take some time to review  
 3 it and we will go off the video record while  
 4 you're doing that. And it will give you a break  
 5 as well. Fair enough?  
 6 **A. Sure.**  
 7 **MR. MARTIN: Time is now 12:53.**  
 8 **And we're going off the record.**  
 9 **(Off the record)**  
 10 **MR. MARTIN: The time is now**  
 11 **1:09. We're back on the record.**  
 12 Q. (By Mr. Roberts) Mr. Dempsey, while we  
 13 were off the record you had an opportunity to  
 14 look at the privilege log as produced and then  
 15 chronologically created a privilege log trying  
 16 to identify this single document that you  
 17 reviewed during your multi-hour six-lawyer  
 18 preparation session yesterday.  
 19 I understand that it's a December of  
 20 2002 letter or correspondence between Valerie  
 21 Loftin and Bob Bonzell. Have you been able to  
 22 locate that document?  
 23 **MR. MEAGHER: I object to the**  
 24 **form.**  
 25 **A. No, I did not.**

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<p>1 Q. (By Mr. Roberts) Am I correct it is a 2 December 2002 memo or letter between those two 3 persons? 4 <b>A. To my recollection that is correct.</b> 5 Q. And how many pages is it? 6 <b>A. I believe it was on two pages.</b> 7 Q. Who was the author? 8 <b>A. Valerie Loftin.</b> 9 Q. She wrote a letter to Bob Bonzell? 10 <b>A. Correct.</b> 11 Q. Bob Bonzell, a non-lawyer, president of 12 DMS, correct? 13 <b>A. Correct.</b> 14 Q. And what is Valerie Loftin's position? 15 <b>A. I'm not certain. I believe she's the</b> 16 <b>head of claims for Jefferson-Pilot.</b> 17 Q. Was she giving Bonzell legal advice? 18 <b>A. I don't know. I don't recall.</b> 19 Q. Did you read the letter yesterday? 20 <b>A. I only looked at one paragraph on it I</b> 21 <b>think is all I looked at.</b> 22 Q. Was it your judgment that that 23 paragraph contained legal advice? 24 <b>A. No.</b> 25 Q. So that -- that single paragraph of a</p>	<p>1 <b>A. The electronic documents or the hard</b> 2 <b>copy documents?</b> 3 Q. Both. 4 <b>A. The hard copy documents were located in</b> 5 <b>a lateral file immediately adjacent to my</b> 6 <b>office. And the electronic documents are on my</b> 7 <b>computer.</b> 8 Q. A lateral file, you mean a -- 9 <b>A. I mean a storage cabinet that is wider</b> 10 <b>than it is deep, if that makes sense to you.</b> 11 <b>It's just a storage file cabinet that's wider</b> 12 <b>than a traditional one.</b> 13 Q. That's where you maintained these 14 Kearney paper documents that you received? 15 <b>A. Yes.</b> 16 Q. I'm sorry, did I ask you this; was 17 there anyone else that participated in the 18 production of documents at ERAC other than 19 yourself? 20 <b>A. At ERAC no one else produced any</b> 21 <b>documents or did anything of that nature.</b> 22 Q. That's because you would have been the 23 only one that would have had documents in your 24 possession? 25 <b>A. At ERAC, yes.</b></p>
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<p>1 single document is the only document you 2 reviewed during your several hour preparation 3 session? 4 <b>A. That's correct.</b> 5 Q. Did you have a role in gathering 6 documents for complying with the subpoena, sir? 7 <b>A. Yes.</b> 8 Q. What was your role? 9 <b>A. Identifying and making a CD to provide</b> 10 <b>to counsel.</b> 11 Q. So you mailed a CD to Mr. Baty with the 12 documents that you were able to collect? 13 <b>A. I believe a runner picked up the CD and</b> 14 <b>then I also produced the hard copy documents</b> 15 <b>that I had as well.</b> 16 Q. So the items that are on the CD would 17 be e-mails and other electronically transmitted 18 communications? 19 <b>A. Correct.</b> 20 Q. Anyone else at ERAC partake in the 21 production of documents pursuant to the 22 subpoena? 23 <b>A. Not to my knowledge.</b> 24 Q. Where did you go to collect the 25 documents?</p>	<p>1 Q. Why do you keep saying at ERAC? Are 2 you referring to potentially documents that -- 3 <b>A. I understand that a document was</b> 4 <b>produced by someone else.</b> 5 Q. Did you see that document? 6 <b>A. I have seen that document, yes.</b> 7 Q. Was that document something that was in 8 your files as well? 9 <b>A. I believe so.</b> 10 Q. Do you know if that was produced to me 11 from you directly? 12 <b>A. I believe so. It was produced by me.</b> 13 <b>I believe it was in the materials that I had.</b> 14 Q. You're referring to the document that 15 Attorney Zahnd provided to me, right? 16 <b>A. I have an understanding of a document I</b> 17 <b>believe Attorney Zahnd produced and that is the</b> 18 <b>document I'm referring to, which is just very</b> 19 <b>short.</b> 20 Q. I didn't come across this document in 21 the documents produced pursuant to the subpoena 22 from ERAC that I received last week. But it's 23 your testimony you gave that document to your 24 counsel to produce to me? 25 <b>A. I believe I did, yes.</b></p>

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1 Q. Do you know why it was that this  
2 document came to me through Mr. Zahnd?

3 A. No.

4 Q. Did you see the letter from Mr. Zahnd?

5 A. No.

6 Q. Does Mr. Newkirk still work with you?

7 A. No.

8 Q. He went with Swiss Re in that  
9 transaction?

10 A. Correct.

11 Q. Are you mindful that it's Mr. Newkirk  
12 that produced that document to me, in addition  
13 to your belief that you produced it to me?

14 A. I have an understanding of what I  
15 believe was produced, but I have not seen  
16 Mr. Zahnd's letter or the document that he  
17 produced.

18 (Dempsey Exhibits 1 & 2 were  
19 marked for identification by the reporter.)

20 Q. (By Mr. Roberts) Exhibit 2, sir, is  
21 the letter from Mr. Zahnd?

22 MR. MEAGHER: Do you have a copy?  
23 If not, I will take a look at the witness'.

24 MR. ROBERTS: I have a copy for  
25 you, sir.

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1 MR. MEAGHER: All right. Thank  
2 you.

3 Q. (By Mr. Roberts) Have you seen this  
4 letter from Mr. Zahnd before?

5 A. No.

6 MR. MEAGHER: If I could take a  
7 look at it before the questions, I would  
8 appreciate it. Thank you so much.

9 Q. (By Mr. Roberts) Now that Mr. Meagher  
10 has a copy --

11 MR. MEAGHER: If I could have a  
12 moment to read it. It's multi page. By the  
13 way, I don't think video was properly noticed  
14 and we object to the use of video at trial. It  
15 does require prior notice. Okay. I have  
16 reviewed it. Thank you.

17 MR. ROBERTS: Are you sure you're  
18 ready? You didn't take much time.

19 MR. MEAGHER: Pretty quick  
20 reader.

21 Q. (By Mr. Roberts) Sir, according to  
22 this letter from Mr. Zahnd dated May 4th, '07,  
23 the document attached was a document that was in  
24 Mr. Newkirk's possession at the time the  
25 subpoena was served. Do you understand that or

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1 is that your understanding?

2 A. I understand that is your assertion.

3 Q. It's not my assertion, it's what the  
4 letter asserts.

5 A. I haven't had time to complete reading  
6 the letter, but...

7 Q. Assume that I'm not misrepresenting --

8 A. Certainly.

9 Q. -- what the letter says, the attached  
10 document was in Newkirk's possession and he's  
11 producing it. Do you know why it would be that  
12 Newkirk would still have this document?

13 A. I have no idea.

14 Q. Was this an electronically stored  
15 document?

16 A. I have no idea.

17 Q. Well, you say you produced it. Is it  
18 something that you stored electronically?

19 A. No.

20 Q. Are the numbers on here accurate?

21 A. I have no idea.

22 Q. Well, the document indicates, last page  
23 of Exhibit 2, "Chris Kearney," it says "he has  
24 two policies," gives the number and then it  
25 identifies the ERC percentage.

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1 A. Okay.

2 Q. And under one policy it says ".2750,  
3 lifetime," what does that mean?

4 A. I'm not sure in what context Mr.  
5 Newkirk was putting this information down.

6 Q. Well, being familiar with the ERC  
7 business and policies and individual disability,  
8 does that mean that the benefits are lifetime?

9 A. The document indicates -- it states  
10 twice lifetime.

11 Q. Once for each policy?

12 A. Well, it has the word "lifetime" under  
13 each policy number.

14 Q. And you don't want to go out on a limb  
15 and speculate as to what lifetime might be in  
16 this context?

17 MR. MEAGHER: Objection to form.

18 A. Well, lifetime in the context of a  
19 disability policy would mean that there is a  
20 lifetime benefit period.

21 Q. (By Mr. Roberts) The next says  
22 "Benefit," and under the 029 policy it says  
23 "67.1 percent," or actually it says .67.1  
24 percent." And under the 069 policy it says a  
25 "100 percent." Does that mean under one policy

<p style="text-align: right;">Page 46</p> <p>1 ERC has 67 percent of the responsibility and 2 under the other it's 100 percent?</p> <p>3 <b>A. Well, it's under the heading of</b> 4 <b>Benefit, so it doesn't necessarily logically</b> 5 <b>follow, but you could make that -- you could</b> 6 <b>make that guess I suppose.</b></p> <p>7 Q. It says "The Reserves .317,171 under 8 one policy and 184,536 under the other. Does 9 that mean the total reserve on the policies as 10 of whatever date this document was is a little 11 over 500,000?</p> <p>12 <b>A. I have no idea.</b></p> <p>13 Q. Is this a form document at ERC, this 14 type of layout of information?</p> <p>15 <b>A. Not to my knowledge.</b></p> <p>16 Q. Do you know why he would include the 17 jurisdiction?</p> <p>18 <b>A. I have no idea.</b></p> <p>19 Q. That's a legal term that indicates 20 where lawsuits can be brought, right?</p> <p>21 MR. MEAGHER: Objection to form.</p> <p>22 <b>A. Mr. Newkirk is a lawyer, so I can only</b> 23 <b>assume he had those type of characteristics in</b> 24 <b>mind, not necessarily to litigate, but -- I</b> 25 <b>don't know. I would have to speculate as to why</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>A. No, I don't know.</b></p> <p>2 Q. You're mindful in the documents that 3 were produced to me last week there's everything 4 from the application filed back in 1990, 5 documents all from 1990 through even last month, 6 right, May of 2007?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. How is it that ERC came to possess 9 those documents?</p> <p>10 <b>A. Which documents?</b></p> <p>11 Q. Well, the documents that predate 2000?</p> <p>12 <b>A. ERC has the right under the reinsurance</b> 13 <b>agreement to copies of all the documents. And I</b> 14 <b>can only speculate as to how they were produced</b> 15 <b>or who obtained them, but it would be pursuant</b> 16 <b>to that right under the reinsurance agreement.</b></p> <p>17 Q. Do you know when that happened?</p> <p>18 <b>A. No. It predated my employment at ERC.</b></p> <p>19 Q. So prior to your employment at ERC 20 there were documents regarding Kearney from the 21 '90 to '96 timeframe at ERC?</p> <p>22 <b>A. Let me amend that somewhat. Prior to</b> 23 <b>my involvement with the Jefferson-Pilot account</b> 24 <b>they were obtained. Exactly when, I don't know,</b> 25 <b>but it was prior to my involvement.</b></p>
<p style="text-align: right;">Page 47</p> <p>1 <b>Mr. Newkirk put that on there.</b></p> <p>2 Q. (By Mr. Roberts) That's what 3 jurisdiction means, right, where lawsuits can be 4 brought?</p> <p>5 MR. MEAGHER: Objection to form.</p> <p>6 <b>A. I think jurisdiction is somewhat of a</b> 7 <b>generic term, but, yes, that would be my</b> 8 <b>understanding, that's where a lawsuit could be</b> 9 <b>brought. It can mean a variety of things,</b> 10 <b>subject matter, personal, etcetera.</b></p> <p>11 Q. (By Mr. Roberts) These list of seven 12 things kind of a To-Do list down at the bottom, 13 do you see that?</p> <p>14 <b>A. I do.</b></p> <p>15 Q. Do you know who was directing that to 16 To-Do List?</p> <p>17 <b>A. I'm not sure I understand what you mean</b> 18 <b>by directing.</b></p> <p>19 Q. Do you know if Mr. Newkirk was creating 20 that to To-Do List and directing that others 21 undertake those items?</p> <p>22 <b>A. No, I don't know that.</b></p> <p>23 Q. At the bottom it says "Copied for DMS." 24 Do you know if he actually copied this document 25 and gave it to DMS?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. You came to be involved in '98?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. And when you came to be involved there 4 was materials regarding Mr. Kearney and ERC's 5 files that predated '98?</p> <p>6 <b>A. Correct.</b></p> <p>7 Q. Do you know how big the file was then?</p> <p>8 <b>A. My recollection of the file at the time</b> 9 <b>I obtained it would be that it was probably less</b> 10 <b>than an inch thick.</b></p> <p>11 Q. What materials were in there?</p> <p>12 <b>A. The materials I recall seeing in the</b> 13 <b>claim file were some claim forms and -- I really</b> 14 <b>don't recall anything specific above and beyond</b> 15 <b>just seeing continuance of disability forms in</b> 16 <b>the file. Aside from that, I don't remember any</b> 17 <b>specific type or form of document.</b></p> <p>18 Q. You don't recall whether the policy was 19 in there?</p> <p>20 <b>A. No, I don't.</b></p> <p>21 Q. Now ERC possesses the application file. 22 Do you know when it was that the application 23 file from 1990 was obtained by ERC?</p> <p>24 <b>A. No, I don't.</b></p> <p>25 Q. You've been the person at ERC or ERAC</p>



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1 responsible for this claim since '98, correct?  
 2 **A. Correct.**  
 3 MR. MEAGHER: Objection to form.  
 4 Q. (By Mr. Roberts) And you don't know  
 5 when it would have been that the application  
 6 file and all the other documents, the 3000 plus  
 7 documents were received?  
 8 **A. As for the application file, I did not**  
 9 **request it, so it had to have been a portion of**  
 10 **the file that I inherited. As for the other**  
 11 **3000 pages, as I stated earlier, I believe those**  
 12 **are largely pursuant to the litigation.**  
 13 Q. Well, there is certainly litigation  
 14 documents in there. There's pleadings, motions,  
 15 correspondence, deposition transcripts. But the  
 16 documents that predate the litigation, were  
 17 those things that came to ERC contemporaneous  
 18 with their date or were they things that came  
 19 after the litigation?  
 20 MR. BATY: Objection. Asked and  
 21 answered.  
 22 MR. MEAGHER: I join.  
 23 **A. To my knowledge anything aside -- I**  
 24 **won't say anything. The documents that you're**  
 25 **referring to would had to have been compiled by**

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1 **someone other than myself.**  
 2 Q. (By Mr. Roberts) The pre-litigation  
 3 documents?  
 4 **A. The pre-1998 documents.**  
 5 Q. Litigation was commenced by  
 6 Jefferson-Pilot in June of 2002. The documents  
 7 in the file that relate to the period '98  
 8 through 2002, are those things that came to you  
 9 prior to litigation?  
 10 **A. I would have to look at the documents.**  
 11 **I honestly don't know.**  
 12 Q. Do you recall how it is you came to  
 13 possess the volume, the thousands of pages?  
 14 **A. Once again, I believe the thousands of**  
 15 **pages are primarily attributable to the motions,**  
 16 **pleadings, correspondence, etcetera, that you**  
 17 **just laid out for us. The minority of the**  
 18 **documents were compiled prior to my involvement,**  
 19 **to my recollection and belief. I don't know**  
 20 **that I personally gathered documents. I would**  
 21 **have to look. If you have a specific document,**  
 22 **I would have to look at it.**  
 23 Q. So during the course of the litigation  
 24 is the case that you contemporaneously received  
 25 from somebody pleadings that are filed, e-mails,

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1 correspondence, deposition transcripts, medical  
 2 records?  
 3 **A. I'm sorry, was that a question?**  
 4 Q. Yes.  
 5 **A. Would you repeat it, please.**  
 6 Q. Is it the case that you receive  
 7 contemporaneously pleadings, correspondence,  
 8 deposition transcripts, medical records in the  
 9 litigation?  
 10 **A. I could receive any or all of those**  
 11 **documents in any given case. That is correct.**  
 12 Q. Why are you being copied on those  
 13 materials?  
 14 **A. You mean with respect to --**  
 15 Q. The litigation?  
 16 **A. I'm being copied on it because of ERC's**  
 17 **interest in the litigation and the fact that I'm**  
 18 **acting as an attorney for Employers Reassurance**  
 19 **Corporation.**  
 20 Q. Are you making decisions in the  
 21 litigation?  
 22 **A. I participate in discussions about**  
 23 **matters in the litigation. I have not made**  
 24 **decisions per se.**  
 25 Q. You weigh-in, give them your thoughts

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1 and opinions, comment about other peoples'  
 2 thoughts?  
 3 **A. Certainly.**  
 4 Q. And apples being apples, ERC has more  
 5 at stake in litigation than Jefferson-Pilot  
 6 does, correct?  
 7 MR. MEAGHER: Objection to form.  
 8 **A. ERC apparently has more than 50 percent**  
 9 **of the reinsurance liability on this claim.**  
 10 Q. (By Mr. Roberts) What does the term "  
 11 work product" mean? Are you familiar with that?  
 12 **A. I'm familiar with that term.**  
 13 Q. Can you tell the jury what it means?  
 14 **A. That would be documents or it could**  
 15 **encompass conversations that an attorney**  
 16 **produces with respect to their client and with**  
 17 **respect to litigation.**  
 18 Q. In anticipation of litigation?  
 19 **A. Certainly.**  
 20 Q. Isn't that the definition?  
 21 MR. MEAGHER: Objection to form.  
 22 **A. I will certainly agree with that.**  
 23 Q. (By Mr. Roberts) There was a lot of  
 24 documents that you maintained that were withheld  
 25 under the claim of work product, are you mindful

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<p>1 of that?</p> <p>2 <b>A. Just from my brief review of your</b></p> <p>3 <b>privilege log, I saw work product identified.</b></p> <p>4 Q. You didn't partake in designating</p> <p>5 documents as work product or attorney/client</p> <p>6 privilege?</p> <p>7 <b>A. No.</b></p> <p>8 Q. You just produced everything you had to</p> <p>9 your counsel and from there they decided what</p> <p>10 would be referred to as work product or</p> <p>11 attorney/client privilege?</p> <p>12 <b>A. That is correct.</b></p> <p>13 Q. Your counsel, Mr. Baty, is with you</p> <p>14 today. Do you know if he participated in that</p> <p>15 exercise with any other lawyers?</p> <p>16 MR. MEAGHER: I would object on</p> <p>17 work product grounds as to what procedures and</p> <p>18 methods were used to determine privilege claims.</p> <p>19 MR. BATY: Join in the objection.</p> <p>20 MR. ROBERTS: Are you instructing</p> <p>21 him not to answer?</p> <p>22 MR. BATY: Yes, I'm going to</p> <p>23 instruct him not to answer. The only reason</p> <p>24 that he would know that or understand that would</p> <p>25 be in discussion with me, so I'm going to</p>	<p>1 discussed the application file from 1990 on</p> <p>2 Mr. Kearney is in there?</p> <p>3 <b>A. You indicated that earlier.</b></p> <p>4 Q. You don't know that?</p> <p>5 <b>A. I don't recall that.</b></p> <p>6 Q. Do you recall that the policy is in</p> <p>7 there?</p> <p>8 <b>A. No, I don't recall that.</b></p> <p>9 Q. Have you ever made an effort to look at</p> <p>10 the policy?</p> <p>11 <b>A. I have looked at a specimen policy in</b></p> <p>12 <b>connection with Mr. Kearney's claim.</b></p> <p>13 Q. When did you do that?</p> <p>14 <b>A. I have probably done that several</b></p> <p>15 <b>times.</b></p> <p>16 Q. Prior to the litigation?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Prior to 2002?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Prior to 2001?</p> <p>21 <b>A. Certainly in 2001. I don't know if</b></p> <p>22 <b>there was anytime prior to 2001, I don't recall,</b></p> <p>23 <b>but I know I did in 2001.</b></p> <p>24 Q. Do you know there's medical records in</p> <p>25 there, in the ERC file?</p>
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<p>1 instruct you not to answer the question.</p> <p>2 Q. (By Mr. Roberts) You know, sir, that</p> <p>3 when a lawyer claims work product it's because a</p> <p>4 document comments on or is in anticipation of</p> <p>5 litigation, right?</p> <p>6 <b>A. Correct.</b></p> <p>7 MR. ROBERTS: Can we have a</p> <p>8 stipulation that all of the documents produced</p> <p>9 to me are authentic?</p> <p>10 MR. BATY: Yes. You and I had</p> <p>11 that discussion earlier in connection with the</p> <p>12 subpoena that you issued to the corporation</p> <p>13 Employers Reassurance. And I told you at the</p> <p>14 time that Mr. Dempsey was the witness who could</p> <p>15 testify to that. And rather than go through the</p> <p>16 documents that were actually produced to you, we</p> <p>17 will stipulate as to the authenticity of the</p> <p>18 documents.</p> <p>19 MR. ROBERTS: Mr. Meagher, you're</p> <p>20 shaking your head up and down. Are you --</p> <p>21 MR. MEAGHER: I have no reason to</p> <p>22 disagree. If the producing party says they are</p> <p>23 authentic, I have no reason to object to that.</p> <p>24 Q. (By Mr. Roberts) Now, as that file</p> <p>25 produced to me exist, there's, I think we</p>	<p>1 <b>A. I don't recall that.</b></p> <p>2 Q. You don't recall there is medical</p> <p>3 records in there?</p> <p>4 <b>A. No, I don't.</b></p> <p>5 Q. There's information in there about</p> <p>6 Mr. Kearney's other lawsuits with third parties.</p> <p>7 Are you mindful of that?</p> <p>8 <b>A. I recall information about</b></p> <p>9 <b>Mr. Kearney's other lawsuits. I don't recall it</b></p> <p>10 <b>was in that file, but I do recall that that</b></p> <p>11 <b>information has arisen in the course of the</b></p> <p>12 <b>adjudication of his claim.</b></p> <p>13 Q. Are you mindful there is information in</p> <p>14 there about his relationship with his wife?</p> <p>15 <b>A. I recall there being some information</b></p> <p>16 <b>about his wife of fairly recent note, but I</b></p> <p>17 <b>don't recall anything specific beyond that.</b></p> <p>18 Q. You're mindful that there is</p> <p>19 surveillance information in there including</p> <p>20 photographs?</p> <p>21 <b>A. I have seen a photograph that I believe</b></p> <p>22 <b>was produced by you.</b></p> <p>23 Q. Well, the privilege log makes reference</p> <p>24 to several photographs that have been withheld</p> <p>25 from me. Are those things that are maintained</p>

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1 in your file?  
2 **A. I don't recall.**  
3 Q. There is IME reports on Mr. Kearney in  
4 your ERC or ERAC file, are you mindful of that?  
5 **A. I do recall an IME report.**  
6 Q. Pleadings including drafts of pleadings  
7 that weren't filed, are you mindful of that?  
8 **A. I recall pleadings. I don't recall**  
9 **drafts, but I do recall pleading.**  
10 Q. It's been the case over the past  
11 several years that drafts of pleadings or  
12 motions or memoranda would be shared with you  
13 before filing, correct?  
14 **A. That's correct.**  
15 Q. Drafts of correspondence to  
16 Mr. Kearney's counsel has been shared with you  
17 before they have been issued, correct?  
18 **A. On some occasions.**  
19 Q. Deposition transcripts have been  
20 provided to you for your review, right?  
21 **A. I have seen at least two or three**  
22 **deposition transcripts.**  
23 Q. Hearing transcripts, right?  
24 **A. Hearing transcripts, yes, I believe**  
25 **there have been a couple hearing transcripts.**

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1 Q. That are in your file?  
2 **A. That were electronic documents I**  
3 **maintained as opposed to being in a physical**  
4 **file.**  
5 Q. Electronic and physical are in your  
6 file?  
7 **A. I'm trying to explain, not**  
8 **differentiate.**  
9 Q. Mr. Kearney's tax returns are in your  
10 file, business and personal?  
11 **A. I recall seeing -- or I recall there**  
12 **being tax information in the file.**  
13 Q. Information regarding audits of  
14 Mr. Kearney's financial condition is in your  
15 file?  
16 **A. I don't recall that.**  
17 Q. Why do you have all that information?  
18 You're not adjudicating the claim, are you?  
19 **A. No, I'm not.**  
20 Q. So why do you have all that  
21 information?  
22 **A. It helps me to analyze the claim.**  
23 Q. And then you express your opinion to  
24 the persons who are responsible for litigating  
25 it, correct?

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1 **A. I express my opinions to the people**  
2 **that are involved in adjudicating the claim as**  
3 **well as litigating the claim.**  
4 Q. Do you do that in all matters of your  
5 insured, your clients insureds, that go to  
6 litigation?  
7 **A. Not all, but probably the majority of**  
8 **all claims that go to litigation have a high**  
9 **level of involvement by someone with Employers**  
10 **Reassurance Corporation.**  
11 Q. Because of the percentage of the  
12 liability you carry?  
13 **A. No. Simply because it's in litigation**  
14 **and it's something that we would be interested**  
15 **in, but it's not a routine that's engaged in**  
16 **every claim.**  
17 Q. Did you review the privilege log before  
18 it was issued to me?  
19 **A. No.**  
20 Q. Could you take a look at it now for me.  
21 **A. Certainly.**  
22 MR. MEAGHER: Do you have another  
23 copy?  
24 **A. Is there something in particular you**  
25 **want me to look at or just to flip through?**

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1 Q. We are going to go through several  
2 entries on there.  
3 **A. Okay.**  
4 MR. MEAGHER: If we're going to  
5 go through several entries, why don't we have a  
6 copy made of that.  
7 MR. BATY: Sure.  
8 MR. ROBERTS: Let's go off the  
9 video record and off the record.  
10 MR. MARTIN: The time is now  
11 1:40. We are going off the record.  
12 (Off the record)  
13 (Dempsey Exhibit 3 through 24 was  
14 marked for identification porter.)  
15 MR. MARTIN: The time is now  
16 1:49. We're back on the record.  
17 Q. (By Mr. Roberts) Mr. Dempsey, do you  
18 know who Arthur Huy, H-u-y?  
19 **A. No, I do not.**  
20 Q. J.L. Roberson?  
21 **A. I am familiar with the name.**  
22 Q. Did you hire Geraldine Johnson?  
23 **A. I spoke with Geraldine Johnson about**  
24 **this matter, but I don't believe she was**  
25 **retained by myself or ERC per se. We had some**

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1 Schmidt?

2 **A. Well, I misinterpreted your sense of**

3 **the word "prosecuting this". And so, yes, there**

4 **have been other lawyers involved such as those**

5 **you just identified.**

6 Q. You personally have interacted with

7 more than ten during the course of this

8 litigation, right?

9 **A. I don't know that for a fact.**

10 MR. ROBERTS: I guess we will

11 stipulate that the privilege log is authentic as

12 well, Exhibit 1, and an accurate representation

13 of the documents referred to?

14 MR. BATY: Right. He didn't see

15 it, but it was produced by counsel.

16 MR. ROBERTS: Can we have that

17 stipulation?

18 MR. BATY: Yes.

19 MR. MEAGHER: The privilege logs

20 aren't evidence, so authenticity is not

21 appropriate, but it is what it is.

22 Q. (By Mr. Roberts) Does ERC have

23 responsibility for the legal expenses in the

24 lawsuit filed by Jefferson-Pilot against

25 Mr. Kearney?

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1 **A. ERC shares a percentage of the legal**

2 **expenses.**

3 Q. Commensurate with its liability on the

4 claim?

5 **A. Correct.**

6 Q. Who is Rick Strange -- or Stange,

7 S-t-a-n-g-e?

8 **A. I believe Mr. Stange is the head of**

9 **litigation for Jefferson-Pilot. I don't know if**

10 **his role has changed since they were acquired by**

11 **Lincoln.**

12 Q. Lincoln Financial?

13 **A. Correct.**

14 Q. Who is Patricia Perez?

15 **A. Ms. Perez is my assistants.**

16 Q. Who is Kristin Knoll, K-n-o-l-l?

17 **A. I don't know.**

18 Q. An e-mail to me in the privilege log.

19 I won't tell anybody. Scott Lancaster?

20 **A. I don't know Scott to my recollection.**

21 Q. Darlene Stanczak, S-t-a-n-c-z-a-k?

22 **A. I don't know.**

23 Q. C.J. Schmidt?

24 **A. I believe Mr. Schmidt is an attorney in**

25 **the law firm that Mr. Ellis and Ms. Callow are**

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1 **members of.**

2 Q. Peter Burrell?

3 **A. I believe Peter Burrell may be in that**

4 **same law firm.**

5 Q. Carl Semmler, S-e-m-m-l-e-r?

6 **A. Mr. Semmler is an attorney employed by**

7 **Lincoln Financial, a staff attorney, in-house**

8 **counsel.**

9 Q. Mark Davenport?

10 **A. Mark Davenport I believe was an actuary**

11 **employed at Jefferson-Pilot at that time.**

12 Q. Bill --

13 **A. I'm sorry, I'm misspeaking. I believe**

14 **Mark Davenport is an attorney in Dallas, Texas.**

15 Q. He apparently was involved in the

16 Kearney claim at Document 1916 in February of

17 '06. Does that ring a bell?

18 **A. No, it doesn't.**

19 Q. How about Bill Davenport?

20 **A. I don't know a Bill Davenport.**

21 Q. Steve Rice?

22 **A. Steve Rice is a CPA employed by DMS.**

23 Q. Andy Cohen?

24 **A. Andy Cohen is counsel for DMS.**

25 Q. Adam Formus?

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1 **A. Adam Formus is counsel for DMS.**

2 Q. Stephanie Farabow?

3 **A. Stephanie Farabow is in-house counsel**

4 **for Jefferson-Pilot now Lincoln Financial.**

5 Q. Carrie Barnes?

6 **A. I believe Ms. Barnes is a DMS employee.**

7 **I believe she's an attorney for DMS.**

8 Q. George Walker?

9 **A. I don't know.**

10 Q. Diane Goodman? Did I mention her

11 before?

12 **A. The name is familiar. I believe**

13 **Ms. Goodman may be a DMS employee, but I can't**

14 **state that with absolute certainty.**

15 Q. Andrew Lynn?

16 **A. I believe Mr. Lynn is an attorney at**

17 **DMS.**

18 Q. Norman Carrier?

19 **A. Mr. Carrier is a claim examiner**

20 **employed by Jefferson-Pilot now Lincoln**

21 **Financial in their Concord, New Hampshire**

22 **office.**

23 Q. What do you understand the status of

24 Mr. Kearney's non-litigation claim to be?

25 **A. I believe he's being paid. Would it be**



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<p>1 possible to take a break in a minute or two?</p> <p>2 Q. That would be perfect. Did I ask you</p> <p>3 who Andy Cohen is?</p> <p>4 A. <b>You did.</b></p> <p>5 Q. Who is Maria Martinez?</p> <p>6 A. <b>I don't know.</b></p> <p>7 Q. Scott West?</p> <p>8 A. <b>Scott West is in-house counsel for</b></p> <p>9 <b>ERAC.</b></p> <p>10 Q. Is he someone that reports to you?</p> <p>11 A. <b>No.</b></p> <p>12 Q. Is he your peer?</p> <p>13 A. <b>Essentially.</b></p> <p>14 Q. Did he recently become involved in the</p> <p>15 claim?</p> <p>16 A. <b>He's only been employed --</b></p> <p>17 Q. Or litigation?</p> <p>18 A. <b>-- by ERAC for a couple of years, so</b></p> <p>19 <b>that would be true.</b></p> <p>20 Q. Now would be a good time for a break?</p> <p>21 A. <b>Thank you.</b></p> <p>22 MR. MARTIN: The time is now</p> <p>23 2:11. We're going off the record.</p> <p>24 (Recess)</p> <p>25 MR. MARTIN: The time is now</p>	<p>1 A. <b>Yes.</b></p> <p>2 Q. (By Mr. Roberts) If you turn to 401.</p> <p>3 A. <b>Okay.</b></p> <p>4 Q. That's a document from February of '95</p> <p>5 from some unknown person to some unknown person</p> <p>6 that's being withheld for what reason?</p> <p>7 A. <b>The privilege claimed is work product.</b></p> <p>8 Q. In February of '95, correct?</p> <p>9 A. <b>Correct.</b></p> <p>10 Q. If you turn to 718.</p> <p>11 A. <b>Okay.</b></p> <p>12 Q. That's a document from the next month</p> <p>13 March of '95 from an unknown author to an</p> <p>14 unknown recipient also being withheld for what</p> <p>15 reason is claimed?</p> <p>16 A. <b>Document 718 -- I'm sorry.</b></p> <p>17 Q. Yes.</p> <p>18 A. <b>Yes. It's being withheld on the basis</b></p> <p>19 <b>of work product.</b></p> <p>20 Q. If you turn to 1466 for me?</p> <p>21 A. <b>Okay.</b></p> <p>22 Q. That document is dated November 14th of</p> <p>23 1996, correct?</p> <p>24 A. <b>According to the privilege log, yes,</b></p> <p>25 <b>that's correct.</b></p>
Page 71	Page 73
<p>1 2:15. We're back on the record.</p> <p>2 Q. (By Mr. Roberts) Mr. Dempsey, let's</p> <p>3 focus a little bit on the privilege log. Your</p> <p>4 mindful of how this is laid out. There's</p> <p>5 several columns and it's -- the references are</p> <p>6 here numerically based on how documents were</p> <p>7 numbered, do you understand that?</p> <p>8 A. <b>Under the Beginning Document column?</b></p> <p>9 Q. Yes.</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. So if I ask you to turn to the</p> <p>12 reference to Document No. 789, could you do</p> <p>13 that?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Take a look at 789, 804, 800, 801, all</p> <p>16 of those documents are dated February '94 and</p> <p>17 have been withheld under the claim of work</p> <p>18 product privilege, right?</p> <p>19 A. <b>That is what this document indicates,</b></p> <p>20 <b>yes.</b></p> <p>21 Q. Meaning that the company was</p> <p>22 anticipating litigation against Mr. Kearney back</p> <p>23 in February of 1994 would be your conclusion,</p> <p>24 right?</p> <p>25 MR. MEAGHER: Objection to form.</p>	<p>1 Q. By your predecessor with responsibility</p> <p>2 for the claim here at ERC?</p> <p>3 A. <b>Mr. Newkirk, that's correct.</b></p> <p>4 Q. Who was your predecessor responsible</p> <p>5 for the Jefferson-Pilot block of business at</p> <p>6 ERC?</p> <p>7 A. <b>That is correct.</b></p> <p>8 Q. His responsibility was in the November</p> <p>9 '96 timeframe, right?</p> <p>10 A. <b>That was his responsibility at that</b></p> <p>11 <b>time.</b></p> <p>12 Q. You were a new-be at ERC at that time?</p> <p>13 A. <b>That is correct.</b></p> <p>14 Q. And the subject of that particular</p> <p>15 document being withheld is what? What's the</p> <p>16 subject of that document?</p> <p>17 A. <b>It says it's a recommendation.</b></p> <p>18 Q. And it's being held on the basis of</p> <p>19 what?</p> <p>20 A. <b>Work product.</b></p> <p>21 Q. And it's a transmittal from ERC to</p> <p>22 Mr. Roberson at Jefferson-Pilot, is that your</p> <p>23 understanding?</p> <p>24 A. <b>It's a transmittal from Mr. Newkirk at</b></p> <p>25 <b>ERC to Mr. Roberson at Jefferson-Pilot.</b></p>

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1 Q. It's a memorandum?

2 A. **That is correct. It's described as a**

3 **memorandum. I don't have the document. I don't**

4 **know, but it's described as a memorandum.**

5 Q. Dated November of '96 being withheld.

6 This recommendation is being withheld on the

7 basis of work product, right?

8 A. **That is what the privilege log**

9 **indicates.**

10 Q. February '97 there's a document

11 numbered 0536?

12 A. **Okay.**

13 Q. Unknown author, unknown recipient,

14 subject is the Kearney claim and it too is being

15 withheld because it's a document in anticipation

16 of litigation or work product?

17 A. **That's what the privilege log**

18 **indicates.**

19 Q. When you produce documents, did you

20 make any effort to conclude -- strike that. A

21 minute ago I referred to a couple documents that

22 had unknown authors and unknown recipients?

23 A. **Yes, you did.**

24 Q. When you produce those documents, did

25 you make an effort to try to conclude who was

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1 the author and who was the recipient?

2 A. **No, I did not.**

3 Q. After you produced documents, did you

4 consult with your counsel about the creation of

5 a privilege log?

6 A. **No, I did not.**

7 Q. You just turned the documents over and

8 now you see a privilege log?

9 A. **That is correct.**

10 Q. Did I have you take a look at 508? I'm

11 sorry.

12 A. **I don't believe you did. I'm looking**

13 **at it.**

14 Q. September of '97, document still prior

15 to your involvement being withheld under the

16 privilege called work product, right?

17 A. **That is what the privilege log**

18 **indicates, yes.**

19 Q. Now if you can take a look at 001 to

20 005. This is a five page memorandum reportedly

21 created by you on the subject of, quote.

22 Additional claim file review" that was

23 transmitted to Harold Shelton, right?

24 A. **You're referring to document 001 of the**

25 **five you just mentioned?**

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1 Q. Document beginning date 001 and end doc

2 number 005, five page document.

3 A. **I see, I misunderstood. Yes.**

4 Q. There's a five page document that you

5 purportedly authored in March of '98 that

6 details your additional claim file review that

7 you gave to Jefferson-Pilot, is that right?

8 A. **That is what the privilege log**

9 **indicates, yes.**

10 Q. Are you mindful sitting here what

11 document is referenced there?

12 A. **I believe I am mindful, but I'm not**

13 **certain that it is, in fact, the document that I**

14 **think it could be.**

15 Q. Is it an accurate characterization of

16 the document to call it Additional Claim File

17 Review?

18 A. **If it's the document I'm thinking of,**

19 **it only pertains in part to Mr. Kearney. It was**

20 **not solely related to him. There was some other**

21 **claims involved if it's the document that I**

22 **believe it is.**

23 Q. We don't know for certain?

24 A. **No, I don't know for certain.**

25 Q. But you did do a claim file review on

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1 Mr. Kearney in or about March of '98?

2 A. **I cannot tell you that I reviewed**

3 **Mr. Kearney's entire claim file, but the**

4 **document -- if this is the document that I**

5 **believe it is, there are -- it's a result of the**

6 **review I did. So, you know, whether it was**

7 **review of documents that I had in my possession**

8 **or I actually reviewed the entirety of the claim**

9 **file at Jefferson-Pilot, I can't tell you.**

10 Q. The next document I want you to focus

11 on is 316?

12 A. **360?**

13 Q. 316.

14 A. **All right.**

15 Q. This is a May of 1998 document being

16 withheld under two separate privileges,

17 attorney/client and work product, right?

18 A. **That's what the privilege log**

19 **indicates.**

20 Q. And the subject matter is claim

21 handling, right?

22 A. **That is correct.**

23 Q. And the author is Bill Ellis, who is

24 the lawyer now in the litigation against

25 Mr. Kearney, right?

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1 A. That's what the privilege log  
2 indicates.  
3 Q. And the recipient is David Newkirk?  
4 A. Again that's what the log indicates.  
5 Q. So more than four years prior to  
6 actually filing a lawsuit against Mr. Kearney,  
7 Mr. Ellis was involved in discussing claims  
8 handling with ERC on Mr. Kearney's claim?  
9 A. I don't know.  
10 Q. That's what one would conclude from  
11 this reference, right?  
12 MR. MEAGHER: Object to form.  
13 A. You can conclude that.  
14 Q. (By Mr. Roberts) Is that a logical  
15 conclusion?  
16 MR. MEAGHER: Same objection.  
17 A. You can conclude that from the fact  
18 that it's on the privilege log.  
19 Q. (By Mr. Roberts) Do you conclude that?  
20 A. Without examining the document I can't  
21 tell you, but I would conclude that by virtue of  
22 the fact it's on the privilege log.  
23 Q. How many files did you personally refer  
24 to DMS under the consulting agreement?  
25 A. Under the consulting agreement I don't

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1 know. I honestly don't know.  
2 Q. Are we talking hundreds?  
3 A. No.  
4 Q. Talking dozens?  
5 A. No.  
6 Q. I'm talking about just not  
7 Jefferson-Pilot, all of the clients?  
8 A. Under the consulting agreement period,  
9 I really don't know. There certainly have not  
10 been hundreds.  
11 Q. What drives you to use their services?  
12 A. DMS provides good customer service and  
13 they --  
14 Q. To whom?  
15 A. To everyone involved.  
16 Q. The policyholder?  
17 A. The policyholder.  
18 Q. What makes you conclude that?  
19 A. Just based on my understanding of how  
20 they conduct their business operations.  
21 Q. They provide you good customer service?  
22 A. ERC is satisfied with the service they  
23 provide.  
24 Q. DMS has been a vendor for more than a  
25 decade?

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1 A. That is correct.  
2 Q. So what directs -- what compels Bill  
3 Dempsey to send a file to DMS?  
4 A. When a company is overwhelmed by the  
5 claims volume or when a company needs additional  
6 resources to investigate a claim.  
7 Q. Then you turn to DMS?  
8 A. Not in every case. Sometimes I  
9 interact with the company.  
10 Q. What directs you to engage DMS?  
11 A. I would engage DMS. At this point we  
12 have DMS involved in blocks that they manage. I  
13 don't engage them on any other basis at this  
14 point. I discuss certain cases that pertain to  
15 blocks that they manage.  
16 Q. So you haven't made a referral to DMS  
17 under the consulting agreement for sometime?  
18 A. No. Not for quite sometime, no, I have  
19 not done that.  
20 Q. The consulting agreement is still in  
21 place?  
22 A. I don't believe it is.  
23 Q. When it was in place, was it a rare  
24 occurrence for you to direct a claim file to  
25 DMS, or was it a common occurrence? I'm

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1 referring to DMS under the consulting agreement.  
2 A. It would be rare.  
3 Q. Sir, I think we're coming near the end  
4 here. I have marked several documents as  
5 Exhibits 3 through 24.  
6 A. Would you like me to return the  
7 privilege log to the reporter?  
8 Q. That would be great. I have marked as  
9 Exhibit 3, it has a Bates number at the bottom  
10 WDDP 000317?  
11 A. Correct.  
12 Q. Second page is -- the full number is  
13 not there. It's 33. And then the copier cut it  
14 off. The third page is 342, do you see that?  
15 A. Yes, I do.  
16 Q. You're mindful that Bates number refers  
17 to documents produced to me that were maintained  
18 in your storage cabinet?  
19 A. Yes.  
20 Q. And you understand these to be the  
21 applications, some of the applications, filed  
22 documents dating back to 1990 on Mr. Kearney?  
23 A. I see there is a notation on  
24 Document 317 that says "App file". And based on  
25 the title of Document 338, I would assume that

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1 this was a report that was gathered in  
2 conjunction with the application for insurance.  
3 And I suspect Document 342 was in conjunction  
4 with Document 338.

5 Q. These are documents from your file,  
6 right?

7 A. By virtue of the fact that they were  
8 produced, yes.

9 Q. Exhibit 2, letter dated September 8,  
10 1993.

11 A. Just one second, Mr. Roberts. I don't  
12 know that I have Exhibit 2. I go from three to  
13 four.

14 Q. Four. Letter dated September 8, '93.

15 A. Yes. Document 813.

16 Q. Exactly.

17 A. Yes, I have that.

18 Q. I think the handwriting on this  
19 document is Roberson, but whether it is or it  
20 isn't, does the handwriting on this document  
21 make sense to you?

22 A. No, not in this context it doesn't.

23 Q. It seems to say, it appears "May should  
24 be at the rate of 63 percent, June at 50  
25 percent, July 100 percent." Those numbers don't

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1 A. Correct.

2 Q. And it says "We've received and  
3 processed the report submitted to the period  
4 January through March of '95 regarding Chris  
5 Kearney." And policy number. "Your report  
6 indicates 100 percent of benefit amount ceded to  
7 ERC. Just need for you to confirm this is the  
8 correct percentage. Also, please submit a  
9 current medical and/or investigative report for  
10 this claimant."

11 Are the facts represented in this  
12 letter accurate as far as you know?

13 MR. MEAGHER: Objection to form.

14 A. I don't know.

15 Q. (By Mr. Roberts) You don't know if  
16 there's been 100 of the benefit amount ceded --

17 A. No.

18 Q. -- c-e-d-e-d to ERC?

19 A. I apologize for interrupting. No, I do  
20 not know that.

21 Q. Do you know that not to be the case?

22 A. No, I don't know it not to be the case  
23 either. It appears that it was an issue here  
24 too.

25 Q. This too has not been produced

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1 mean anything to you?

2 A. They have no significance to me.

3 Q. Then Exhibit 5, is that 792, Document  
4 792?

5 A. Correct.

6 Q. This came from your file. Do you hold  
7 any significance to these notes on this  
8 particular exhibit?

9 A. It appears to be a document where  
10 someone was inquiring with regard to residual  
11 disability, onset of residual disability. I  
12 can't read all the rest of it.

13 Q. This is not a document that has been  
14 produced previously in the litigation. I was  
15 wondering is this a document that ERC created or  
16 is this a document you received from  
17 Jefferson-Pilot?

18 A. ERC, to the best of my knowledge, did  
19 not create this document.

20 Q. Do you see it's dated November of '94?

21 A. I do.

22 Q. Exhibit 6, document labeled 398 appears  
23 to be a April 1, '95 letter from Employers  
24 Reinsurance Corporation to Jefferson-Pilot,  
25 right?

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1 previously in this litigation even though it was  
2 purportedly sent to Jefferson-Pilot. Do you  
3 know why that would be?

4 MR. MEAGHER: Object to form.

5 A. I do not know.

6 Q. (By Mr. Roberts) Next Exhibit 7. This  
7 appears to be Mr. Shelton's response to ERC,  
8 right?

9 A. Correct.

10 Q. And he expounds on it and references a  
11 second policy, do you see that?

12 A. Yes.

13 Q. And Mr. Shelton provides  
14 contemporaneously the recent disability claim  
15 report for ERC, right?

16 A. He indicates that's enclosed with this  
17 information, yes.

18 Q. Do you happen to know that was the  
19 course of business that ERC would  
20 contemporaneously receive those type of forms on  
21 Mr. Kearney?

22 A. No, I do not.

23 Q. You don't know one way or the other?

24 A. No.

25 Q. Is that the case in '98 through 2002?



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1 A. I don't believe it was the case.

2 Q. Did you ever receive any continuance of  
3 disability information involving Mr. Kearney  
4 during that period?

5 A. It's possible. I can't tell you one  
6 way or the other.

7 Q. Document 010, 011, 012 is Exhibit 8.  
8 Do you know whose handwriting this is?

9 A. I believe this is John Anderson's  
10 handwriting.

11 Q. So at the top where it says "Res equals  
12 501,707," is that the ERC reserve or is that the  
13 JP reserve?

14 A. I do not know.

15 Q. Look back at Exhibit 2.

16 A. I don't believe I have an Exhibit 2.

17 Q. Okay. The document that Mr. Newkirk  
18 provided, do you know who authored that  
19 document, ERC or somebody else?

20 A. I believe Mr. Newkirk authored that  
21 document.

22 Q. When he states the reserve there, is he  
23 referring to the ERC reserve exclusive of any JP  
24 reserve?

25 A. I don't know.

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1 MR. MEAGHER: Objection. Asked  
2 and answered.

3 Q. (By Mr. Roberts) What's the total  
4 reserve he reflects on Exhibit 2?

5 MR. MEAGHER: Objection. Form.

6 A. Approximately 501,000 and some change.

7 Q. (By Mr. Roberts) Thank you. Do you  
8 recall in the whole history of this claim of  
9 Mr. Kearney that there was an October 2001 Cuban  
10 coffee house meeting?

11 MR. MEAGHER: Objection to form.

12 A. I am not certain what you're alluding  
13 to there. I can speculate, but I'm not going to  
14 do that.

15 Q. (By Mr. Roberts) You were instructed  
16 yesterday over the course of five hours not to  
17 speculate, so don't do that.

18 MR. MEAGHER: I'm going to  
19 object. It's attorney/client privilege as to  
20 any discussions.

21 Q. (By Mr. Roberts) In October of 2001,  
22 there was a meeting in Miami, Florida. You're  
23 mindful that that event was reported to you  
24 subsequent, right?

25 A. Yes.

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1 Q. And at that meeting, I wasn't there, I  
2 also have been told that there was a settlement  
3 proposal or some kind of offer made to  
4 Mr. Kearney's lawyer. Is that your  
5 understanding also?

6 A. That's correct.

7 Q. And the offer was contingent on  
8 Mr. Kearney turning in his policies, right?

9 A. I don't recall.

10 Q. Were you consulted prior to the  
11 individuals who made that offer to Mr. Kearney's  
12 lawyer?

13 A. I believe I was.

14 Q. And did you participate somehow in the  
15 authority that they were given to make the offer  
16 in the stated amount, whatever that amount was?

17 A. Can you restate that?

18 Q. Can you authorize those individuals to  
19 state a certain offer?

20 A. I don't --

21 MR. BATY: I'm going to object to  
22 attorney/client privilege in terms of what he  
23 did. I think your first question was did he  
24 participate and that I was going to allow him to  
25 answer.

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1 Q. (By Mr. Roberts) Why don't we return  
2 to my first question if that's the one that  
3 you're allowed to answer. Did you participate  
4 in authorizing those individuals to make the  
5 stated offer? Are you looking for guidance?

6 A. I'm waiting to see if there's is an  
7 objection because I don't think that was your  
8 prior question.

9 Q. Can we read back the prior question?  
10 (Whereupon, the previous question  
11 from page 88, line 15 was read back by the  
12 reporter.)

13 Q. (By Mr. Roberts) What do you  
14 understand the question to have been?

15 MR. BATY: The first question she  
16 read, did you participate.

17 (Whereupon, the previous question  
18 from page 88, line 15 was read back by the  
19 reporter.)

20 MR. BATY: Answer that question.

21 A. I believe so.

22 Q. (By Mr. Roberts) Who else  
23 participated?

24 A. I don't recall.

25 Q. Was Jefferson-Pilot represented during

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1 that process?

2 **A. I don't recall.**

3 Q. Do you recall who you communicated

4 with?

5 **A. I think I know who I did, but I don't**

6 **know with absolute certainty.**

7 Q. Do you think it was Bill Hughes?

8 **A. No.**

9 Q. Bob Mills?

10 **A. I believe it was Bob Mills.**

11 Q. You don't recall any other

12 participants?

13 **A. No.**

14 Q. You don't recall any other

15 participants, correct?

16 **A. No, I do not recall any other**

17 **participants.**

18 Q. Is this Exhibit 8 a form that you, ERC

19 gets from DMS on claims that are referred to

20 DMS?

21 **A. I believe ERC got certain claim**

22 **analysis reported on this form, yes.**

23 Q. Not just on Mr. Kearney's claim, but

24 other claims?

25 **A. I believe so.**

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1 Q. Is this an ERC created form or is this

2 a DMS created form?

3 **A. This is, to my knowledge, this is a DMS**

4 **created form.**

5 Q. This document indicates that

6 Mr. Kearney was born in 1952 and the review was

7 done in '97, so he would have been 45, 44,

8 assume for me my math is correct?

9 **A. I will make that assumption, yes.**

10 Q. The reserve 501,000, would it grow or

11 decrease as Mr. Kearney gets older?

12 **A. Ultimately it will decrease.**

13 Q. But he was 44 at that time. Would it

14 increase when he's 45, 46, 47, 48?

15 **A. I don't know.**

16 Q. Does it adjust or does it remain static

17 at the time the claim is filed or once it's

18 established?

19 **A. A reserve changes over time.**

20 Q. On a group basis or an individual claim

21 basis?

22 **A. On an individual claim basis.**

23 Q. So is there an actual exercise to

24 adjust reserves to individual claims at ERC?

25 **A. Repeat that, please.**

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1 Q. So is there an actual exercise to

2 adjust reserves to individual claims at ERC?

3 **A. As I stated earlier, the reserves are**

4 **what they are. What an actuary does with them I**

5 **can't tell you.**

6 Q. How about 9. Nine is a July 8th, 1997

7 letter from Mr. Shelton to DMS that comes from

8 your file and is numbered 050.

9 MR. MEAGHER: Counsel, before you

10 proceed, I note inadvertently there is other

11 insureds names identified in the Re and those

12 should be redacted before it's attached to the

13 deposition.

14 MR. ROBERTS: I don't know that I

15 agree with that, but let's proceed.

16 MR. MEAGHER: Then I would

17 designate this as confidential under the order.

18 MR. ROBERTS: The entire

19 transcript?

20 MR. MEAGHER: Not yet.

21 Q. (By Mr. Roberts) This says " Dear

22 John, Enclosed is the material from the files in

23 the above three insureds, Mr. Kahn, Mr. Kearney

24 and Mr. London. These are the cases that you're

25 going to investigate for us to see what can be

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1 done either to settle these in an equitable

2 manner to both the reinsurer and to

3 Jefferson-Pilot, or to give us further advice on

4 where to proceed," right?

5 **A. That is correct.**

6 Q. Are these three files files that

7 Newkirk directed JP to send to DMS under the

8 consulting agreement?

9 **A. I don't know.**

10 Q. Do you think it would be important for

11 the task to be to see what could be done to

12 settle these in an equitable manner on behalf of

13 the insured instead of just the reinsurer and

14 Jefferson-Pilot?

15 MR. BATY: Objection.

16 Argumentative.

17 MR. MEAGHER: Objection to form.

18 **A. Can I answer? Yes, I would think that**

19 **is important.**

20 Q. (By Mr. Roberts) Do you know why

21 that's not stated here?

22 MR. BATY: Objection. Same

23 objection.

24 MR. MEAGHER: Join.

25 **A. No, I do not.**

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<p>1 Q. (By Mr. Roberts) Next is ten and this</p> <p>2 appears to be DMS's status report on those three</p> <p>3 referrals with some information redacted and</p> <p>4 some information about Mr. Kearney, right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know if this information was in</p> <p>7 the ERC claim file when you took responsibility</p> <p>8 for the Jefferson-Pilot block of business?</p> <p>9 MR. MEAGHER: Objection to form.</p> <p>10 A. No, I don't know.</p> <p>11 Q. (By Mr. Roberts) Next is a June 1998</p> <p>12 letter, which is Exhibit 11, right?</p> <p>13 A. That is correct.</p> <p>14 Q. This is from Shelton to Newkirk in June</p> <p>15 of '98. Had you at that point taken</p> <p>16 responsibility for the claim or not?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, if you look at 001 of the</p> <p>19 privilege log, this is after you write a five</p> <p>20 page letter to Shelton regarding additional</p> <p>21 claim file review, 001 to 005, right?</p> <p>22 A. Correct.</p> <p>23 Q. And what this letter reflects is just</p> <p>24 the sharing of certain expenses relating to</p> <p>25 Mr. Kearney's policy, sharing of information</p>	<p>1 A. As far as I know, no.</p> <p>2 Q. Exhibit 12 is a similar letter dated a</p> <p>3 week later, June 26th, '98. Do you know whose</p> <p>4 handwriting that is "Okay to pay our percentage</p> <p>5 to JP?"</p> <p>6 A. I believe it's Mr. Newkirk's writing.</p> <p>7 Q. Was it the procedure that you or he had</p> <p>8 to authorize payments on the Kearney claim?</p> <p>9 A. For issues that are sent to us for</p> <p>10 reimbursement, yes, we would have to authorize</p> <p>11 the payment.</p> <p>12 Q. By reimbursement you're excluding</p> <p>13 actual claim dollars paid? You're just talking</p> <p>14 about the surveillance, medical records, legal</p> <p>15 expenses, that kind of thing?</p> <p>16 A. For expenses certainly. For those</p> <p>17 types of expenses we would authorize the</p> <p>18 reimbursement, yes.</p> <p>19 Q. What about payment of the claim?</p> <p>20 A. Payment of the claim, you know, it's --</p> <p>21 we are billed periodically from Jefferson-Pilot</p> <p>22 for their payments.</p> <p>23 Q. How do you satisfy yourself that the</p> <p>24 payments are appropriate?</p> <p>25 A. That Jefferson-Pilot's payments are</p>
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<p>1 about expenses?</p> <p>2 A. That's what it appears to be, yes.</p> <p>3 Q. Does the calculation at the bottom make</p> <p>4 sense to you?</p> <p>5 A. Yes.</p> <p>6 Q. Does this mean that there was issued</p> <p>7 \$3500 of benefits and 2800 of the 3500 was</p> <p>8 something ceded to ERC?</p> <p>9 A. That is what the document indicates.</p> <p>10 Q. And then someone did the math on that</p> <p>11 and calculated that to be 80 percent of the</p> <p>12 obligation was ceded to ERC?</p> <p>13 A. That's what it would appear to be, yes.</p> <p>14 Q. And you multiply that by the amount of</p> <p>15 the expense and you come to ERC's portion,</p> <p>16 right?</p> <p>17 A. I think that's correct.</p> <p>18 Q. Is that number accurate? Does ERC have</p> <p>19 80 percent of the responsibility?</p> <p>20 A. I don't know.</p> <p>21 Q. Is it something that is presently in</p> <p>22 dispute between you and Jefferson-Pilot?</p> <p>23 A. No.</p> <p>24 Q. Has there ever been a dispute about the</p> <p>25 percentage as far as you know?</p>	<p>1 appropriate? I believe we take a ceding</p> <p>2 company's word for it rather than do a claim by</p> <p>3 claim review.</p> <p>4 Q. Well, you do do audit reviews and you</p> <p>5 get involved in litigation and you hand pick</p> <p>6 some for review, right?</p> <p>7 A. True.</p> <p>8 Q. 13 is a July 9, '98 letter from Shelton</p> <p>9 to Newkirk regarding Kearney and, again, the</p> <p>10 sharing of expenses?</p> <p>11 A. Correct.</p> <p>12 Q. 14 is some ERC internal documents</p> <p>13 regarding expenses paid on Kearney's claim?</p> <p>14 A. That's correct.</p> <p>15 Q. 15 is the cover page of a Motion For</p> <p>16 Summary Judgment in a case between J.E. Grote</p> <p>17 and Innomation. That appears in your Kearney</p> <p>18 claim file?</p> <p>19 A. I see that.</p> <p>20 Q. From a case filed in 1997. Do you know</p> <p>21 why that's in your claim file?</p> <p>22 A. I'm not certain.</p> <p>23 Q. Sixteen is a document that's Bates 191.</p> <p>24 This is appears to be page two of some document.</p> <p>25 Page one wasn't produced, but it indicates there</p>

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1 were some surveillance of Mr. Kearney in January  
2 of 2001 and you were provided the report of the  
3 surveillance, is that accurate?

4 MR. MEAGHER: Objection to form.

5 A. It appears to be a portion of an  
6 investigative report.

7 Q. (By Mr. Roberts) Was that the case?  
8 Did you along the way get copies of all the  
9 surveillance that was being conducted and  
10 performed on the Kearney claim?

11 A. I don't know that I got copies of  
12 anything -- or excuse me, of everything.

13 Q. You were getting billed for it?

14 A. Uh-huh.

15 Q. And had to authorize it for it to be  
16 paid?

17 A. Correct.

18 Q. Is it your testimony to the jury that  
19 you were getting billed for it, but you were not  
20 actually getting the surveillance reports?

21 MR. MEAGHER: Objection to form.

22 MR. BATY: Join.

23 A. That's not unusual.

24 Q. (By Mr. Roberts) Were you directing  
25 that surveillance be performed?

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1 A. I don't believe so.

2 Q. Did you at any point in time?

3 A. I don't recall.

4 Q. Next is Exhibit 17, which is the first  
5 page of some forensic accounting report of  
6 Joseph Levy to Bob Mills from your file?

7 A. Uh-huh.

8 Q. You're mindful that -- it's called  
9 Supplemental Report. You're mindful there were  
10 some financial reviews of Mr. Kearney's records  
11 performed and included in your file?

12 A. I recall that there was a financial  
13 review done at some point, but that's the extent  
14 of my recollection.

15 Q. You're mindful of just one being done?

16 A. I only recall one.

17 Q. Next is Exhibit 18. And this is the  
18 letter that Mr. Kearney received with the  
19 lawsuit. I included it because I wanted you to  
20 tell me who Jane Neidermyer is who is shown in  
21 the blind copy?

22 A. As I indicated to you earlier, Jane  
23 Neidermyer is the person that was in charge of  
24 their claim operation, of Jefferson-Pilot's  
25 claim operation in Concord, New Hampshire.

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1 Q. 19 is a document labeled 0025  
2 reportedly from October of 2003. The first page  
3 of -- series of medical records on Mr. Kearney.

4 You're still getting contemporaneous medical  
5 records on Mr. Kearney here at ERC or ERAC?

6 A. I last received some medical records  
7 several months ago.

8 Q. What's the purpose for you receiving  
9 medical records?

10 A. For me to assist in the analysis of the  
11 claim.

12 Q. Next is Exhibit 20 labeled -- it's  
13 Bates No. 1913. This is purported an entry  
14 regarding payment. This is actually never  
15 actually signed by the Judge or presented to the  
16 Judge as far as I'm aware, but it appears in  
17 your claim file. Do I conclude correctly that  
18 drafts of motions and pleadings to be filed with  
19 the Court were shared with you before filing?

20 A. On some occasions, yes.

21 Q. Next is 21, which is a spreadsheet.  
22 This is titled Unpaid COLA Benefits. Do you  
23 know why this appears in your file?

24 A. I believe it's because it's in  
25 association with Mr. Kearney's claim.

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1 Q. Next is 22 which is medical records on  
2 Mr. Kearney of a Dr. Shepard from November of  
3 2006, just eight months ago. I think we talked  
4 about this earlier. You get medical records on  
5 Mr. Kearney even ones from recent time in order  
6 to assist in the evaluation, is that right?

7 A. That is correct.

8 Q. Is his medical condition under analysis  
9 presently?

10 MR. MEAGHER: Well, with regard  
11 to any discussions between the counsel group  
12 during pendency of the litigation, I would  
13 object on the grounds of work product and  
14 attorney/client privilege.

15 MR. ROBERTS: Are you instructing  
16 him not to answer?

17 MR. BATY: I join in the  
18 objection, but it's to the extent that he can  
19 answer the question without getting into  
20 discussions that you've had with counsel.

21 MR. MEAGHER: Could you read the  
22 question back, please?

23 (Whereupon, the previous question  
24 was read back by the reporter.)  
25



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<p>1 <b>A. I believe Mr. Kearney's medical</b>  2 <b>condition is at issue.</b>  3 Q. (By Mr. Roberts) His present medical  4 condition?  5 <b>A. His present medical condition.</b>  6 Q. Outside the litigation whether or not  7 he qualifies for benefits today, whether he had  8 a lawsuit pending or not, is that your  9 testimony?  10 <b>A. Yes.</b>  11 Q. And you've been assisting in that  12 endeavor, correct?  13 <b>A. I would like for you to define</b>  14 <b>assisting.</b>  15 Q. You're getting present medical records  16 for that purpose, correct?  17 <b>A. Yes. I received medical records</b>  18 <b>several months or at least several weeks ago. I</b>  19 <b>can't remember the last time I was updated on</b>  20 <b>it, but it's probably been in the four to eight</b>  21 <b>week range.</b>  22 Q. What triggered the present analysis of  23 his medical condition for his continued  24 entitlement to benefits?  25 <b>A. Well, I believe an ongoing disability</b></p>	<p>1 you when the deposition is concluded, counsel.  2 MR. MEAGHER: All right. Fine.  3 Thank you.  4 Q. (By Mr. Roberts) So it's just a  5 routine exercise to review his medical records  6 because he has an ongoing claim. That's what's  7 going on right now?  8 <b>A. Yes.</b>  9 Q. Are his credit card records being  10 evaluated for that purpose?  11 <b>A. I don't know.</b>  12 MR. MEAGHER: Objection to the  13 form.  14 Q. (By Mr. Roberts) Have you sought his  15 records for that purpose?  16 <b>A. Which records?</b>  17 Q. Credit card records?  18 <b>A. I have not sought those records.</b>  19 Q. Do you know if they are being sought  20 for that purpose?  21 <b>A. I believe so.</b>  22 Q. Is the next one 24 which is a May 31,  23 2007 letter to Mr. Kearney from DMS, which comes  24 from your claim file?  25 <b>A. I'm sorry, are you asking me if this</b></p>
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<p>1 <b>claim is subject to that type of analysis at any</b>  2 <b>point in time.</b>  3 Q. You're mindful Mr. Kearney just had a  4 heart attack?  5 <b>A. No, I'm not.</b>  6 MR. MEAGHER: Is he going to be  7 available for deposition next week?  8 MR. ROBERTS: You got a one  9 track mind.  10 MR. MEAGHER: We want to know if  11 he's incapacitated, certainly we will change the  12 date.  13 MR. ROBERTS: You would  14 accommodate him?  15 MR. MEAGHER: Well, I haven't  16 been informed by you that that's a problem.  17 MR. ROBERTS: Your colleague  18 knows.  19 MR. MEAGHER: We have travel  20 plans. Okay. So it's not going on Wednesday?  21 MR. ROBERTS: Let me proceed with  22 the deposition, please.  23 MR. MEAGHER: You don't want to  24 respond to me?  25 MR. ROBERTS: I will respond to</p>	<p>1 <b>comes from my claim file?</b>  2 Q. The next document is Exhibit 24, which  3 is a May 31, 2007 letter, correct?  4 <b>A. That is correct.</b>  5 Q. And this came from your claim file?  6 <b>A. I believe so.</b>  7 Q. This document that is just two weeks  8 old?  9 <b>A. I believe so.</b>  10 Q. And this doesn't relate to litigation.  11 This relates to his ongoing claim?  12 <b>A. Right.</b>  13 Q. And you're getting these documents  14 contemporaneous with their issuance?  15 <b>A. Correct.</b>  16 Q. I need one moment.  17 (Off the record)  18 Q. (By Mr. Roberts) Privilege log,  19 Exhibit 1, can you turn to 2948 and 2949?  20 <b>A. I have a non-chronological privilege</b>  21 <b>log. I'm sorry. I can look for it, but it</b>  22 <b>might take me --</b>  23 MR. BATY: What's the number  24 again?  25 Q. (By Mr. Roberts) On that document</p>